

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

RICARDO TORRES-CARABALLO,
et al.,

Plaintiffs,

v.

MUNICIPALITY OF YAUCO, et al.,

Defendants.

Civil No. 07-1891 (JAF)

OPINION AND ORDER

Plaintiffs, Ricardo Torres-Caraballo, Ramón Torres-Caraballo, and Roberto Torres-Mercado bring this action under 42 U.S.C. §§ 1983 and 1985, the Puerto Rico Constitution, and 31 L.P.R.A. § 5141 ("Article 1802") against Defendants, Municipality of Yauco; Yauco police officers Carlos Viera-Rivera, Luis Vélez-Lebrón, Radamés Figueroa-Torres, and Edwin Caraballo; an unknown insurance company, and various unknown officers or employees of the Yauco Municipal Police. Docket Document No. 1. Defendants move to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Docket Document No. 20. The motion is unopposed.

I.

Factual and Procedural Synopsis

We derive the following factual summary from Plaintiffs' complaint. Docket Document No. 1. As we must, we assume that all of

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1 Plaintiffs' allegations are true and make all reasonable inferences
2 in their favor. Alternative Energy, Inc. v. St. Paul Fire & Marine
3 Ins. Co., 267 F.3d 30, 36 (1st Cir. 2001).

4 On September 26, 2006, Plaintiff Ricardo Torres, an individual
5 diagnosed with schizophrenia, was carrying a machete. Defendant Viera
6 pointed a gun at him and instructed him to put down the machete.
7 Defendant Vélez also pointed his gun at Ricardo Torres and told him
8 to put the machete down. In response to the officers' instructions,
9 Ricardo Torres screamed and called for his brother Ramón.

10 The officers arrested Ricardo Torres. After they handcuffed him,
11 Viera handed Vélez another set of handcuffs. Vélez struck Ricardo
12 Torres in the face with Viera's handcuffs. Defendant Caraballo
13 prevented Ramón and Roberto Torres from interfering with the other
14 officers' actions.

15 The officers took Ricardo Torres to the police station and
16 released Ramón Torres. Ramón Torres later went to the station where
17 the officers then placed him under arrest.

18 The police held Ricardo and Ramón Torres in jail for two days
19 before they appeared before a magistrate judge.

20 Plaintiffs filed the present complaint on September 25, 2007.
21 Docket Document No. 1. Defendants moved to dismiss on May 12, 2008.
22 Docket Document No. 20.

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II.

Motion to Dismiss Standard Under Rule 12(b)(6)

Pursuant to Federal Rule of Civil Procedure 12(b)(6), a defendant may move to dismiss an action against him, based solely on the pleadings, for the plaintiff's "failure to state a claim upon which relief can be granted." FED. R. CIV. P. 12(b)(6). In assessing a motion to dismiss, "[w]e begin by accepting all well-pleaded facts as true, and we draw all reasonable inferences in favor of the [non-movant]." Wash. Legal Found. v. Mass. Bar Found., 993 F.2d 962, 971 (1st Cir. 1993); see also Coyne v. City of Somerville, 972 F.2d 440, 442-43 (1st Cir. 1992). We then determine whether the plaintiff has stated a claim under which relief can be granted.

A plaintiff must set forth "a short and plain statement of the claim showing that the pleader is entitled to relief," FED. R. CIV. P. 8(a)(2), and need only give the respondent fair notice of the nature of the claim and petitioner's basis for it. Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512-15 (2002). To survive a motion to dismiss, a plaintiff must allege facts that demonstrate "a plausible entitlement to relief." Rodríguez-Ortiz v. Margo Caribe, Inc., 490 F.3d 92, 95 (1st Cir. 2007) (citing Bell Atl. Corp. v. Twombly, ___ U.S. ___, 127 S.Ct. 1955, 1967 (2007)).

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III.**Analysis**

Defendants move to dismiss the complaint on the grounds that (1) the Eleventh Amendment bars monetary claims against a state; (2) Plaintiffs fail to state a claim under § 1985; (3) Plaintiff Roberto Torres fails to state a cognizable claim; (4) there are no cognizable claims against Defendant Figueroa; (5) Defendants are entitled to qualified immunity; and (6) we should not exercise supplemental jurisdiction over Plaintiffs' Puerto Rico claims. Docket Document No. 20. We examine each of these arguments in turn.

A. Eleventh Amendment

Defendants argue that Eleventh Amendment sovereign immunity bars Plaintiffs' claims against Defendant Municipality of Yauco and its employees, Vélez, Viera, Caraballo, and Figueroa, in their official capacities. Docket Document No. 20.

The Eleventh Amendment provides that the "[j]udicial power of the United States shall not be construed to extend to any suit . . . commenced or prosecuted against one of the . . . States by citizens of another State." U.S. CONST., amend. XI; see also Edelman v. Jordan, 415 U.S. 651, 663 (1974) (stating that "an unconsenting State is immune from federal-court suits brought by its own citizens as well as by citizens of another State"). The main purpose of the Amendment "is to minimize federal courts' involvement in disbursement of state monies." Gotay Sánchez v. Pereira, 343 F. Supp. 2d 65, 72

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1 (D.P.R. 2004). The Eleventh Amendment, accordingly, also bars suits
2 for monetary relief against state officers in their official
3 capacities because the state treasury would pay the damages. Ford
4 Motor Co. v. Dep't of the Treasury, 323 U.S. 459, 464 (1945).

5 "For Eleventh Amendment purposes, the Commonwealth [of Puerto
6 Rico] is treated as if it were a state; consequently, the Eleventh
7 Amendment bars any suit brought against it." Gotay Sánchez, 343
8 F.Supp. at 71-72 (citing Metcalf & Eddy, Inc. v. P.R. Aqueduct and
9 Sewer Auth., 991 F.2d 935 (1st Cir.1993)); see also Espinal-
10 Domínguez v. Puerto Rico, 352 F.3d 490, 493-94 (1st Cir. 2003).
11 Because "a state only has existence through its instrumentalities
12 that carry out its functions and establish its public policy . . .
13 suits brought against non-autonomous instrumentalities of the state
14 [are] considered suits against the state itself." Padilla Cintrón v.
15 Rosselló González, 247 F. Supp. 2d 48, 57 (D.P.R. 2003).

16 Defendants have not presented any evidence to demonstrate that
17 Yauco's police department is an arm of the Commonwealth. Docket
18 Document No. 20. We, therefore, find that the Eleventh Amendment
19 does not bar Plaintiffs' claims against the Municipality of Yauco and
20 its employees in their official capacities. Auer v. Robbins, 519 U.S.
21 452, 456 (1997) (finding that the St. Louis police department was not
22 an arm of the state for purposes of the Eleventh Amendment because
23 the city, not the state, was responsible for its financial
24 liabilities).

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1 **B. Section 1985**

2 Defendants argue that Plaintiffs have failed to state a claim
3 under § 1985 because Plaintiffs have not alleged that Defendants
4 conspired to discriminate against them as members of a distinct,
5 suspect class. Docket Document No. 20.

6 To state a claim under § 1985(3), Plaintiffs must allege the
7 existence of:

8 (1) a conspiracy, (2) a conspiratorial purpose
9 to deprive a person or class of persons,
10 directly or indirectly, of the equal protection
11 of the laws or of equal privileges and
12 immunities under the laws, (3) an overt act in
13 furtherance of the conspiracy, and (4) either
14 (a) an injury to person or property, or (b) a
15 deprivation of a constitutionally protected
16 right or privilege. _____

17 Aulson v. Blanchard, 83 F.3d 1, 3 (1st Cir. 1996).

18 To meet the requirements of the second prong, Plaintiffs must
19 allege specific facts showing that the Defendants' conspiracy was
20 rooted in some "class-based, invidiously discriminatory animus."
21 Hahn v. Sargent, 523 F.2d 461, 469 (1st Cir. 1975) (internal
22 quotation marks omitted) (quoting and applying Griffin v.
23 Breckenridge, 403 U.S. 88, 99 (1971)); accord Aulson, 83 F.3d at 4.
24 "To assess whether a person or identifiable group is a protected
25 class falling within the scope of § 1985(3)'s protections," we
26 consider whether they "would be subject to heightened scrutiny under
27 the Equal Protection Clause." Piacenti v. Levangie, 998 F. Supp. 86,

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1 91 (D. Mass. 1998) (citing Libertad v. Welch, 53 F.3d 428, 448 (1st
2 Cir. 1995)).

3 Plaintiffs Ramón and Roberto Torres have not alleged that they
4 belong to an identifiable, suspect class. Docket Document No. 1.
5 We, therefore, dismiss Plaintiffs' Ramón and Roberto Torres' § 1985
6 claims. See Aulson, 84 F.3d at 6-7.

7 Plaintiffs allege that Plaintiff Ricardo Torres suffers from
8 schizophrenia. Docket Document No. 1. The mentally ill, however, are
9 not a suspect or quasi-suspect class under the equal protection
10 clause. See City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432,
11 445-46 (1985). We, therefore, also dismiss Plaintiff Ricardo Torres'
12 § 1985 claim.

13 **C. Roberto Torres' Claims**

14 Defendants assert that Plaintiff Roberto Torres has failed to
15 allege that he personally suffered any constitutional violations.
16 Docket Document No. 20.

17 Under § 1983, persons acting under color of state law are liable
18 for subjecting any citizen or person within the jurisdiction of the
19 United States to "the deprivation of any rights, privileges or
20 immunities secured by the Constitution." 42 U.S.C. § 1983.

21 In the complaint, Plaintiffs state that Roberto Torres attempted
22 to stop the confrontation between the officers and Plaintiff Ricardo
23 Torres and that Defendant Caraballo asked him not to intervene.
24 Docket Document No. 1. Plaintiffs have not alleged any constitutional

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1 violations with regard to this interaction. Id. We, therefore,
2 dismiss Plaintiff Roberto Torres' claims in their entirety.

3 **D. Claims Against Defendant Figueroa**

4 Defendants argue that we should dismiss the claims against
5 Defendant Figueroa because Plaintiffs have failed to make any
6 specific allegations against him. Docket Document No. 20. The
7 complaint is, in fact, void of any mention of acts committed by
8 Figueroa. Docket Document No. 1. We, therefore, dismiss the claims
9 against him.

10 **E. Qualified Immunity**

11 Defendants assert that Defendants Vélez, Viera, and Caraballo
12 are entitled to qualified immunity. Docket Document No. 20.

13 Qualified immunity protects state officials from the burden of
14 standing trial or facing other onerous aspects of litigation.
15 Saucier v. Katz, 533 U.S. 194, 200 (2001). "The reach of this
16 doctrine is long, but not infinite." Pagan v. Calderon, 448 F.3d 16,
17 31 (1st Cir. 2006).

18 To determine whether Defendants are entitled to qualified
19 immunity, we consider whether (1) "the plaintiff's allegations, if
20 true, establish a constitutional violation," (2) "the constitutional
21 right at issue was clearly established at the time of the putative
22 violation"; and (3) "a reasonable officer, situated similarly to the
23 defendant, would have understood the challenged act or omission to
24 contravene the discerned constitutional right." Id. Qualified

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1 immunity, thus, "safeguards even unconstitutional conduct if a
2 reasonable officer at the time and under the circumstances
3 surrounding the action could have viewed it as lawful." Jordan v.
4 Carter, 428 F.3d 67, 71 (1st Cir. 2005).

5 Plaintiffs allege violations of their Fourth, Fifth, and
6 Fourteenth Amendment rights. Docket Document No. 1. We examine each
7 of these allegations in turn.

8 **1. Fourth Amendment**

9 Plaintiffs allege that Defendants Viera and Vélez violated
10 Plaintiff Ricardo Torres' Fourth Amendment right to protection from
11 excessive force by striking him in the face with a set of handcuffs
12 after they had already subdued and handcuffed him. Docket Document
13 No. 1.

14 The Fourth Amendment protects people "against unreasonable
15 searches and seizures." U.S. CONST. amend. IV. "To establish a Fourth
16 Amendment violation based on excessive force, a plaintiff must show
17 that the defendant employed force that was unreasonable under the
18 circumstances." Jennings v. Jones, 479 F.3d 110, 119 (1st Cir. 2007).
19 We judge reasonableness "from the perspective of a reasonable officer
20 on the scene." Graham v. Connor, 490 U.S. 386, 396 (1989).

21 We find that Plaintiffs' allegations, if true, constitute a
22 clearly-established constitutional violation that a reasonable
23 officer would have understood to contravene the Fourth Amendment's
24 protections. See Headwaters Forest Def. v. County of Humboldt, 276

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1 F.3d 1125, 1130 (9th Cir. 2002) (finding the use of pepper spray
2 against non-violent protesters unreasonable because "the protesters
3 were sitting peacefully, were easily moved by the police, and did not
4 threaten or harm the officers"); Vinyard v. Wilson, 311 F.3d 1340,
5 1348 (11th Cir. 2002) (finding excessive force when officer bruised
6 and pepper sprayed female suspect who was handcuffed in back of
7 patrol car); Park v. Shiflett, 250 F.3d 843, 853 (4th Cir. 2001)
8 (finding excessive force where officers threw non-threatening couple
9 against the wall and on the ground, used pepper spray against them,
10 handcuffed and arrested them). We, therefore, find that Defendants
11 Vélez and Viera are not entitled to qualified immunity from Plaintiff
12 Ricardo Torres' Fourth Amendment claim of excessive force.

13 **2. Fifth and Fourteenth Amendments**

14 Plaintiffs Ramón and Ricardo Torres allege violations of their
15 due process rights under the Fifth and Fourteenth Amendments of the
16 Constitution. Docket Document No. 1. Because the Fifth Amendment
17 applies to the federal government and Plaintiffs' claims are directed
18 at Commonwealth actors, we analyze Plaintiffs' due process
19 allegations under the Fourteenth Amendment. U.S. CONST. amend. V.

20 The Fourteenth Amendment provides that no state shall "deprive
21 any person of life, liberty, or property, without due process of the
22 law." U.S. CONST. amend. XIV, § 1. "To state a claim for a violation
23 of procedural due process, a plaintiff must (1) assert a protected
24 property or liberty interest, and (2) show that state action deprived

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her of that interest without due process of law.” Siaca v. Autoridad de Acueductos y Alcantarillados de P.R., 160 F. Supp. 2d 188, 202 (D.P.R. 2001).

Plaintiffs allege that they were incarcerated for two days before Defendants brought them before a judge. Docket Document No. 1. Plaintiffs have failed to establish, however, that a delay of two days between their arrest and their appearance before a judge contravenes a protected liberty interest. Id. We, therefore, find that Plaintiffs have failed to allege a violation of their due process rights and dismiss Plaintiffs’ claims under the Fifth and Fourteenth Amendments. Siaca, 160 F. Supp. 2d at 202.

F. Supplemental Claims

Having retained some of Plaintiffs’ federal claims, we choose to exercise supplemental jurisdiction over Plaintiffs’ Puerto Rico claims pursuant to 28 U.S.C. § 1367(a).

IV.

Conclusion

For the aforementioned reasons, we hereby **GRANT IN PART** and **DENY IN PART** Defendants’ motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), Docket Document No. 20. We retain Plaintiff Ricardo Torres’ § 1983 claim based on a violation of his Fourth Amendment rights against Defendants Vélez and Viera in their official

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1 and personal capacities and Plaintiffs' Puerto Rico claims. We
2 **DISMISS** all other claims **WITH PREJUDICE**.

3 **IT IS SO ORDERED.**

4 San Juan, Puerto Rico, this 23rd day of July, 2008.

5 s/José Antonio Fusté
6 JOSE ANTONIO FUSTE
7 Chief U. S. District Judge